

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

ST.Rev..No. 201 of 2005()

TA.525/2004 of S.T.A.T.ADDL.BENCH-I, ERNAKULAM
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PETITIONER:

THE GUJARAT CO-OPERATIVE MILK MARKETING
FEDERATION LTD., CHITTUR ROAD, KOCHI-682 013,
REPRESENTED BY THE SENIOR EXECUTIVE,
GOVIND RAMACHANDRAN.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENT:

STATE OF KERALA.

BY SPL. GOVERNMENT PLEADER (TAXES) SHRI V.V.ASHOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Revision No.201 of 2005

Dated, this the 29th day of May, 2007

ORDER

H.L.Dattu, C.J.

M/s. Gujarat Co-operative Milk Marketing Federation Ltd. is the revision petitioner in this Sales Tax Revision Petition. It is a co-operative society dealing in milk and milk products. The petitioner is a registered dealer both under the Kerala General Sales Tax Act and the Central Sales Tax.

2. Petitioner had filed its annual returns claiming exemption on the sales turnover of "Amul Tazza Milk" which according to it is only "pasturised milk" coming under Entry 23 of Third Schedule to Kerala General Sales Tax Act. The assessing authority while concluding the assessment for the assessment year 2000 - 2001 has levied the tax at 12% treating "Amul Tazza Milk" as a milk product as such an item falling under Entry 92 of the First Schedule to the Act.

3. The assessee being aggrieved by the said finding and conclusion reached by the Assessing Authority had approached the higher forum by filing an appeal. The Appellate Authority has concurred with the findings and conclusion reached by the Assessing Authority. Thereafter the assessee has carried the matter by way of second appeal before the Kerala Sales Tax Appellate Tribunal. The Tribunal by order dated 30.9.2004 has rejected the appeal and has confirmed the orders passed by the Assessing Authority. The

Tribunal would hold that the "Amul Tazza Milk" is a milk product and, therefore, it falls under Entry 92 of the First Schedule. The reasoning and conclusions reached by the Tribunal is as under:-

“Evidently and admittedly Tazza Milk has undergone pasteurization and toning. It is also subjected to Ultra High Temperature. Besides, there is an addition of Vitamin A and D to the Tazza Milk. According to the appellant, pasteurization at 63°C and the subsequent treatment at Ultra High Temperature of 135°C for three seconds, there occurs a deduction in nutrition and hence vitamins A and D are added to compensate the loss of nutrition due to treatment of UHT pasteurization. It is argued by the appellant that this treatment will not change the identity of the commodity. The appellant would practically admit that the milk has undergone a degree of processing, but the argument is that the product is still retaining its functional identity, since there is no difference in identity before and after processing. Evidently, the Tazza Milk has undergone a degree of processing and the appellant himself has treated it as manufacture by indicating it on the cover of the package. After having endorsed as a manufactured item, the appellant is estopped from contending otherwise. In that view of the matter, it is not necessary for us to go into the meaning of the item in commercial parlance and common parlance and the functional character of the item.”

4. Aggrieved by the aforesaid order passed by the Tribunal, the assessee has come before us in this revision petition. The question of law raised for our consideration and decision is whether the Tribunal is justified in classifying "Amul Tazza Milk" as not pasturised milk after admitting that the

process adopted by the assessee is only pasturisation?

5. Learned counsel for the revision petitioner would submit that the 'Tazza Milk' sold by the assessee would fall under Entry 23 of the Third Schedule to the Kerala General Sales Tax Act (the Act for short) and, therefore, is exempt from payment of tax under the Act. It is further contended that merely because vitamins A and D are added to the pasteurized milk, it would not lose its identity as a pasteurized milk. He, therefore, submits that the authorities under the Act and the Tribunal were not justified in holding that "Amul Tazza Milk" is a milk product and would fall under Entry 92 of the First Schedule to the Act.

6. Per contra, Sri Ashokan, learned Special Government Pleader (Taxes) would submit, that, the Tazza Milk cannot be construed as a pasteurized milk for the reason, that, when Tazza Milk is processed and sold, the assessee would add vitamins A and D to the pasteurized milk and thereby a process is involved and in view of that, the Tazza milk requires to be construed as a milk product falling under Entry 92 of the First Schedule to the Act.

7. In order to answer the question of law framed for our consideration and decision, the relevant entries required to be extracted. Entry 92 of the First Schedule to the Act reads as under:

Milk products including milk powder, baby food, ghee,
cheese and butter except curd, butter milk, Horlicks,
Boost, Bournvita, Complan and similar items whether or

not bottled, canned or packed. The point of levy is sale point and the rate of tax is 12%.

Entry 23 of the Third Schedule to the Act is as under:

“Fresh milk including pasteurised, toned or re-constituted milk”.

8. The goods falling under the Third Schedule are exempted under sec.9 of the Act.

9. According to the Assessing authority "Amul Tazza Milk" is a Milk Product. Therefore, the first question that requires to be answered is what is a Milk Product. In our view, when milk is processed a commodity which is entirely different from milk and which cannot be identified as such may be obtained and the commodity so obtained can be described as a "milk product". Its composition and use will be basically different from that of the milk obtained in the natural form. In the alternative, it can be said, whenever a commodity is subjected to a process and some change is brought about in its constitution, it can be said that the resultant commodity is the product of the original commodity.

The entry is both inclusive and exclusive. It includes milk powder, baby food, ghee, cheese and butter. The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words occurring in the body of the entry. When it is so used, those words and phrases must be construed as comprehending not only such things as may signify according to their nature and import, but also those things which the

interpretation clause declares that they shall include. (See C.I.T. vs. Taj Mahal Hotel, (1971) 3 SCC 550.

The word 'excluding' is also used in the entry to exclude curds, butter milk, Horlicks, Boost, Bournvita and Complan and similar products from the entry Milk Products, because these products are brought to tax under different entry in the Third Schedule to the Act.

10. It is not the case of the assessee before this court that what is sold by the assessee is fresh milk. Therefore, we need not have to look into the meaning of the expression "fresh milk". Then the next question that arises for our consideration is whether the "Tazza Milk" is a pasteurized milk or toned or re-constituted milk. The assessee in the memorandum of revision petition has explained the meaning of the expression "pasteurization". According to the assessee "pasteurization" is the process of heating milk to 63°C for thirty minutes in approved and properly operated equipment and immediately cooling to 5°C and it renders the milk safe for human consumption by destruction of all spoilage organisms. The method of pasteurization adopted by the petitioner is Ultra High Temperature pasteurization. It also keeps the milk for long duration when compared to fresh milk. Pasteurization refers to the process of heating every particle of milk to at least 63°C for 15 seconds. In approved and properly operated equipment. After pasteurization the milk is immediately cooled to 5°C or below.

11. The process of heating, holding and rapid cooling called

pasteurization (named after Louis Pasteur, the French Scientist) ensures that the bacteria is destroyed. This mild form of heat treatment kills any pathogenic bacteria that may be present without affecting nutritive value or the flavour. It also extends the shelf life by reducing the spoilage bacteria.

12. Shri Ashokan, learned counsel appearing for the Revenue, has brought to our notice the meaning of the expression “*pasteurization*” by referring to 'The World Book of Encyclopedia, 1992 Edition'. In the said book the meaning of the expression “pasteurization” is as under:

“*Pasteurization*” involves heating milk to kill disease-causing bacteria. Nearly all milk sold in industrialised countries is pasteurized. Most is pasteurized by the *high temperature short-time*, or HTST, *method*. This method involves heating milk to 72°C for 15 seconds and then quickly cooling it. Some milk is pasteurized by the *batch method* – that is, by heating it to 63°C for 30 minutes. In a method called *ultrapasteurization*, milk is heated to at least 138°C for 2 or more seconds and then cooled rapidly”.

Immediately after explaining the meaning of the expression “pasteurization” there is a sub-heading which speaks of 'fortification' which says to improve the food value of the milk by adding certain nutrients especially vitamins and proteins. Some dairies add vitamin A and D because the quantity is low in milk. They fortify skimmed milk with protein and vitamin A as well as vitamin D. A few dairies also add other vitamins and some minerals to milk.

13. Keeping in view the dictionary meaning of the expression

“pasteurization” and also how the product is understood in the common parlance, let us get back to the entries under the Act. Entry 92 of the First Schedule to the Act speaks of milk product including milk powder, baby food, ghee, cheese etc. Milk product means a product which is not used as milk. When milk is processed a commodity which is entirely different from milk and which cannot be identified as such may be obtained and the commodity so obtained can be called as milk product. Its composition and use will be basically different from that of fresh milk or pasteurised milk.

14. Entry 23 of the Third Schedule speaks of a fresh milk including a pasteurized, toned or reconstituted. Before us it is not a case of the assessee or his learned counsel that what is being sold is a fresh milk, but a pasteurized milk. Admittedly, the milk is heated to a particular temperature which is already mentioned and immediately thereafter cooled and to supplement the pasteurized milk, vitamins A and D is added because the quantity of vitamins A and D is low. Merely because vitamins A and D are added to the milk which is pasteurized, it would not cease to be pasteurised milk. By adding vitamins 'A' and 'D' also to the pasteurised milk, the milk retains all its natural flavours and characteristics. In that view of the matter the authorities under the Act as well as the Tribunal had misdirected itself to come to a conclusion that what is being sold by the assessee is a milk product, not a pasteurized milk. In view of the above, the orders passed by the assessing authority and the Tribunal requires to be set aside and a direction requires to be issued to the assessing authority to re-quantify the tax

liability of the petitioner treating the Tazza Milk sold by the assessee as pasteurized milk which would fall under Entry 23 of the Third Schedule to the Kerala General Sales Tax Act. Ordered accordingly.

**H.L. DATTU,
Chief Justice.**

**K.T. SANKARAN,
Judge.**

mt/DK.